

**STATEMENT
of
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FEDERAL COMMUNICATIONS COMMISSION**

**Before the
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

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Good morning Mr. Chairman, Ranking Member Upton and distinguished members of the Subcommittee. Thank you for inviting us to appear before you again this morning.

Almost exactly 216 years ago, on December 15, 1791, the American people ratified the Bill of Rights. First among them is the First Amendment. Among other things, it guarantees the freedom of speech and freedom of the press. Perhaps it is first because all other rights and all other issues can be affected by how the media filters and shapes information about them. In 1791, other than word of mouth, the primary medium for conveying information and opinion was paper. Today, competition, innovation and technology have produced an explosion of countless forms of media that bombard us with so much data our culture has created a text messaging acronym to name one of the phenomena produced by these changes: “TMI” or “too much information.”

Of course, the Federal Communications Commission is tasked with reviewing rules governing the ownership of only some of the platforms that comprise today’s media market place. As a direct result of the importance the media play in our society, media ownership has been the highest-profile issue that the Commission has worked on over the years. The current proceeding began at my first open meeting as a Commissioner, almost 18 months ago. The Commission’s work on this matter has been unprecedented in scope and thoroughness. We gathered and reviewed over 130,000 initial and reply comments and extended the comment deadline once. We released a Second Further Notice in response to concerns that our initial notice was not sufficiently specific about proposals to increase ownership of broadcast stations by people of color and women. We gathered

and reviewed even more comments and replies in response to the Second Notice. We traveled across our great nation to hear directly from the American people during six field hearings on ownership in: Los Angeles and El Segundo, Nashville, Harrisburg, Tampa-St. Pete, Chicago, and Seattle. We held two additional hearings on localism, in Portland, Maine and here in our nation's capital. During those hearings, we heard from 115 expert panelists on the state of ownership in those markets and we stayed late into the night, and sometimes early into the next morning, to hear from concerned citizens who signed up to speak.

We also commissioned and released for public comment ten economic studies by respected economists from academia and elsewhere. These studies examine ownership structure and its effect on the quantity and quality of news and other programming on radio, TV and in newspapers; on minority and female ownership in media enterprises; on the effects of cross-ownership on local content and political slant; and on vertical integration and the market for broadcast programming. We received and reviewed scores more comments and replies in response. Some commenters did not like the studies and their critiques are part of the record.

So, during my entire term as a Commissioner, we have been reviewing this matter. But our review didn't begin last year. The previous round began in 2002. At that time, the Commission received thousands of formal comments and millions of informal comments. The Commission held four localism hearings across the country to gather additional evidence. The FCC also produced twelve media ownership working group studies. We all know that the 2002 review ended badly for the Commission – with

both the legislative and judicial branches reacting through a Congressional override of the national ownership cap, and a reversal and remand from the Third Circuit in the *Prometheus* case. Although the court threw out almost all of the Commission's order, it concluded that, "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."¹

But this debate did not begin in 2002 either. In 2001, the FCC issued a rulemaking focused on the newspaper-broadcast cross ownership ban, which was implemented in 1975. Comments and replies were gathered there too. That proceeding sprouted up as the result of a June 2000 report from a Democrat-controlled FCC, which found that the ban may not be necessary to protect the public interest in certain circumstances. That report resulted from yet another proceeding, which commenced in 1998. The 1998 proceeding stemmed from a 1996 proceeding; which was sparked by legislation; which was engendered by a strong bi-partisan vote in a Republican-controlled Congress and signed into law by a Democrat President.

In short, the directly elected representatives of the American people, the Congress, enacted a statute that contains a presumption in favor of modifying or repealing the ownership rules as competitive circumstances change. Section 202(h) states that we must review the rules and "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest."² This section

¹ *Prometheus Radio Project v. F.C.C.*, 373 F.3d 372, 398 (3d. Cir. 2004)

² 47 U.S.C. § 303, note.

appears to upend the traditional administrative law principle requiring an affirmative justification for the modification or elimination of a rule. We also have a duty to pursue the noble public policy goals of competition, diversity and localism. This is our mandate from Congress. All of the ideas before us have been debated for years and, in some cases, decades. We are still debating them today, and will continue to do so through the public comment and Sunshine period.

I've greatly valued hearing directly from the thousands of people who have traveled to our hearings on media ownership, often on short notice. While we have been the object of a great deal of anger, being on the frontlines of democracy in this way has deepened my love for our country and its diverse peoples. We are truly the greatest nation on earth.

The media landscape has undergone dramatic change in the past few years. Now we have five national networks, not the three I grew up with. Today we have hundreds of cable channels spewing out of a multitude of video content produced by more, not fewer, but *more* entities than existed 32 years ago. Now we have two vibrant DBS companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites, a plethora of wireless devices operating in a robustly competitive wireless market place, iPods, Wi-Fi, and much more. And that's not counting the myriad new technologies and services that are coming over the horizon such as those resulting from our Advanced Wireless Services auction of last year or the upcoming 700 MHz auction, which starts next month. There is no disputing that the marketplace has been transformed by technological advances and business innovations into the most

competitive multimedia environment in human history. Consumers have more choices and more control over what they read, watch and listen to than ever. As a result, at least 300 daily newspapers have gone out of business in the last 32 years because people are looking elsewhere for their content. Newspaper circulation has declined year after year. Since just this past spring, average daily circulation has declined 2.6 percent. Newspapers' share of advertising revenue has shrunk while advertising for online entities, which are not subject to cross ownership restrictions, has surged. Is the cross-ownership ban still in the public interest, or is it a millstone around the neck of a drowning industry? The statute demands an answer.

Has this new era of competition been helpful or harmful to localism and diversity? Audiences seeking news, local information and entertainment are more fragmented than ever before. But combinations allowed by the 1996 Act have occurred. What these changes mean for localism and diversity is a question we are still examining. On the one hand, some argue that combinations that may have been dangerous to diversity in 1975 are no longer any threat due to the existence of an unlimited number of delivery platforms and content producers. Not only are there more hoses to deliver the information, there are more spigots to produce the information. On the other hand, most people still rely primarily on television broadcasts and newspapers for their local news and information. With local broadcasters and newspapers still producing a large share of local online content as well, are there really more diverse sources of local journalism than before? All of us must handle this question with great care.

That question begs yet another question that is vexing to me: what can the FCC do to promote ownership among people of color and women? Many positive and constructive ideas before the Commission may be hobbled by Supreme Court prohibitions against race-specific help on one side, and a lack of statutory authority for doing much more on the other side. Like it or not, whatever the FCC or Congress does must withstand constitutional muster. So let's focus on the possible -- and the legally sustainable. I am hopeful that many of the ideas before us for a vote on December 18 can be adopted so America can start back on the path of increased ownership of traditional media properties by women and people of color.

In the meantime, all Americans, and the rest of the world, are migrating toward the boundless promise of new media for their news, information and entertainment. That's where the eyeballs, ad dollars, energy and investments are going. It should be no wonder that this exciting frontier is lightly regulated. While traditional media is shrinking, new media is growing. The best news is that all Americans will benefit from this new paradigm because new technology empowers the sovereignty of the individual, regardless of who you are. All of us should continue to examine the important public policy implications of this new era in the context of these facts.

Thank you for having us here today, and I look forward to answering your questions.